appended to this judgment.

I award the sum of $125,000 to the first plaintiff for the lost years.

In the result there will be damages for the first plaintiff for the funeral expenses of $3,000, $6,500 for loss of expectation of life and $125,000 for lost years. And for the second plaintiff damages of $600 for the loss of the use of the car.

The plaintiffs also claim interest. I am of the view that on principle no interest should be awarded on damages in running down cases, following the case of *Ban Pet Hock* v. *Ong Ah Ho.*[7]

As regards the special damages, I am of the view that no interest ought to be awarded. The defendants have not delayed in any way in the conduct of this case. Moreover the first plaintiff's claim of $7,257 for funeral expenses and the second plaintiff's claim of $1,575 for the loss of the use of his car are excessive. The amounts claimed are double the amounts eventually agreed.

Order accordingly.

APPENDIX

DAMAGES FOR "LOST YEARS"

Formula for Annual Multiplier =
Probable Earnings – Tax Element + Employer's CPF

EARNINGS AT REGISTRAR'S LEVEL

Monthly Salary of Registrar (Bundle B-4)	$ 3,275.00 p.m.
NWC Element (Bundle B-4)	$ 493.48 p.m.
Monthly Salary including NWC wage supplements (Bundle B-4)	$ 3,768.48 p.m.
Gross earnings per annum (including 13 month payment)	$ 3,768.48 x 13)
	= $48,990.24

TAX ELEMENT

Annual Gross Income (exclusive of Employers' CPF)	$48,990.24
Deductions:	
– Personal Relief	$ 3,000.00
– Employees' CPF @ 25%	$11,497.56
– Total Deductions	$14,497.56
Total Annual Taxable Income	$34,492.68
Tax on 1st $25,000	$ 2,750.00
Tax on balance $9,492.68 @ 21%	$ 1,993.46
ANNUAL TAX PAYABLE	$ 4,743.46

EMPLOYEES' CPF

Employers' CPF is 25% of Earnings

Therefore Annual Employers' CPF on $48,990.24 @ 25% $ 12,247.56

MULTIPLICAND AT REGISTRAR'S LEVEL

Annual Multiplicand = Probable Earnings – Tax Element + Employers' CPF

= $48,990.24 – $4,743.46 + $12,247.56

= $56,494.34

MULTIPLIER 11

IN ALL, LOST YEARS ASSESSED AS AT REGISTRAR'S LEVEL

Annual Multiplicand	$ 56,494.34
At 11 years' straight multiplier	$621,437.74

Annual Damages 20%

= 20% (Annual Multiplicand x Multiplier)
= 20% ($56,494.34 x 11)
= 20% (621,437.74)
= $124,287.54

TOTAL would be $125,000.00 (rounded up)

Solicitors: *Lee & Lim; Khattar Wong & Partners, Cooma Lau & Loh & M. Karthigesu.*

SHANMUGAM NAGAIAH & ANOR. v. SIVAKOLUNTHU KUMARASAMY & TRUSTEES OF RAMAKRISHNA MISSION BOYS' HOME – Interested Party

[O.C.J. (Chua J.) October 29, 1985]

[Singapore – Originating Summons No. 673 of 1984]

Land Law – Joint tenancy – Order of Court that matrimonial property be sold and proceeds be equally divided – Death of husband before sale made – Whether joint tenancy severed – Whether Order could be varied.

Family Law – Divorce – Joint tenancy – Order of Court that matrimonial property be sold and proceeds equally divided between husband and wife – Death of husband before sale made – Effect of – Whether Order could be varied.

Arasu (the deceased) and the defendant, Sivakolunthu, were married in 1953. In July 1982 the defendant obtained a decree *nisi* of divorce. In her petition the defendant also prayed for an order for a just division of the matrimonial property known as Nos. 41 & 41A, Jalan Tari Serimpi, Singapore ("the said property") which was conveyed to the husband and wife as joint tenants in 1971. By an Order of Court dated October 5, 1983, it was ordered, *inter alia* that the said property be sold within six months of the order and the proceeds of sale be equally divided between the husband and wife. The husband died on October 15, 1983 leaving a Will bequeathing all his property real and personal whatsoever and wheresoever situate to the Ramakrishna Mission Boys' Home.

The plaintiffs, the administrator's of the estate of Arasu, sought, *inter alia*, a declaration that the said joint tenancy was severed by virtue of the Order of Court dated October 5, 1983 and the defendant and the estate of Arasu now have an equal share in the said property and hold the said property as tenants-in-common. The defendant, however, claimed that she was entitled to the whole of the said property on the ground that she was the sole survivor of the joint tenancy and submitted that there had been no severance. Alternatively, if there had been a severance the order of October 5, 1983 should be varied and an order be made that the said property be sold and that 75% of the proceeds be paid to the defendant. The question before the court was whether the beneficial joint tenancy was ever severed while Arasu was alive.

Held: (1) a unilateral declaration of intention to sever, if communicated to the other joint tenants, is sufficient to effect a severance;

(2) an Order of Court directing the sale and division of the proceeds of sale in accordance with the parties' respective interests in the joint tenancy operate as a severance of the joint tenancy the moment it is made;

(3) on the authorities cited and on the facts of this case the beneficial tenancy was severed while Arasu was alive;

(4) the court has no power to vary the order of October 5, 1983.

Cases referred to:

(1) *Williams* v. *Hensman* 70 E.R. 862.
(2) *Khoo Seoke Haing* v. *Cheah Khay Pin & Anor.* (1885) 4 Ky. 74.
(3) *Hawksley* v. *May* [1955] 3 All E.R. 353.
(4) *Re Draper's Conveyance* [1967] 3 All E.R. 853.
(5) *Nielson-Jones* v. *Fedden* [1974] 3 All E.R. 38.
(6) *Burgess* v. *Rawnsley* [1975] 3 All E.R. 142, 148 & 154.

ORIGINATING SUMMONS.

David Gerald (*James Masih* with him) for the plaintiffs.

Jacob Chacko for the defendants.

V. Ramakrishnan for the interested party.

Cur. Adv. Vult.

Chua J.: This is an application by way of Originating Summons by Shanmugam Nagaiah and Arul Anandan (plaintiffs), the Administrators of the Estate of K.T. Arasu Karthigasu Thirunavukarasu (K.T. Arasu). By this Originating Summons the plaintiffs seek the declarations of the Court that:

"(1) the property namely Lot 549, MK XX in the District of South Seletar, Singapore and known as Nos. 41/41A, Jalan Tari Serimpi, Singapore (hereinafter known as "the said property") was prior to the Order of Court dated October 5, 1983 held by the defendant herein and the said K.T. Arasu Karthigasu Thirunavukarasu, etc. etc., deceased before his death, as joint tenants. The said joint tenancy was severed by virtue of the said Order of Court made by the Honourable Mr. Justice F.A. Chua in the High Court and dated October 5, 1983.

(2) the defendant and the administrators of the Estate of K.T. Arasu Karthigasu Thirunavukarasu etc. etc. now have an equal share in the said property and hold the said property as tenants-in-common.

(3) the said property be sold by the plaintiffs within six months of the Order to be made herein and the proceeds thereof be equally divided between the plaintiffs and the defendant.

(4) half the proceeds of the rentals received from the letting of the said property since June 1, 1984 be paid over to the plaintiffs.

(5) the defendant do pay the plaintiffs the cost of his application."

K.T. Arasu and the defendant, Sivakolunthu Kumarasamy, were married in 1953. In 1982 the defendant petitioned for divorce (Divorce Petition No. 334 of 1982) on the ground that the marriage had broken down irretrievably in that the parties had lived apart for a continuous period of at least four years immediately preceding the presentation of the petition. In July 1982 the defendant obtained a decree nisi of divorce. In her petition the defendant also prayed for an order for a just division of the matrimonial property known as Nos. 41 and 41A, Jalan Tari Serimpi, Singapore (the said property). The said property was purchased in 1971 and conveyed to the husband and wife as joint tenants. By an Order of Court dated October 5, 1983, it was ordered that the said property be sold within six months of the order and the proceeds of sale be equally divid-

ed between the husband and wife and that the husband pay to the wife maintenance of $1 per month. A few days after the said order was made K.T. Arasu poured kerosene over himself and set himself alight. He was taken to hospital where he died on October 15, 1983.

Before his death K.T. Arasu had executed a Will in which he bequeathed all his property real and personal whatsoever and wheresoever situate to the Ramakrishna Mission Boys' Home.

The defendant now claims that she is entitled to the whole of the said property on the ground that she is the sole survivor of the joint tenancy formerly held by herself and K.T. Arasu. The plaintiffs have tried to persuade the defendant to have the said property sold and the proceeds to be equally divided but the defendant insists that she is entitled to the whole of the said property.

The plaintiffs are anxious to execute their duty as trustees and executors and now seek the declarations prayed for in the Originating Summons.

The contention of the plaintiffs is that the joint tenancy which subsisted between the husband and wife was severed in the lifetime of the husband. The defendant on the other hand submits that there had no severance. Alternatively, if there had been a severance the Order of October 5, 1983 should be varied and an order be made that the said property be sold and that 75% of the proceeds of sale be paid to the defendant, the reason being that the defendant had made a bigger contribution towards the purchase of the said property; that she had incurred debts amounting to $45,000 for supporting the family; and that the husband had not made a full disclosure of his assets as he had $123,000 savings.

The question is, whether the beneficial joint tenancy was ever severed while K.T. Arasu was alive.

There are a number of ways by which a joint tenancy may be severed. In *Williams* v. *Hensman*[1] Sir W. Page Wood V.C. in the course of his judgment said (p. 867):

> "A joint tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the *jus accrescendi*. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund – losing, of course, at the same time, his own right of survivorship. Secondly, a joint tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to that particular share, declared only behind the backs of the other persons interested."

In *Khoo Seoke Haing* v. *Cheah Khay Pin & Anor.*,[2] it was decided by Sidgreaves C.J. that where an earlier partition had been ordered between the parties, who were joint tenants, the partition decree operated as a severance the moment it was made, in the lifetime of the joint tenants; that from that moment the plaintiff was entitled to only a moiety and had no further interest in the other's half; that the decree had not been carried into effect was immaterial. The learned Chief Justice therefore ordered that the partition decree be carried out.

Havers J. in *Hawksley* v. *May*[3] was of the view that a unilateral declaration of intention to sever, if communicated to the other joint tenants, may be sufficient to effect a severance.

In *Re Draper's Conveyance*[4] a dwelling house which became the matrimonial home was conveyed to a husband and wife as joint tenants. In November 1965 the wife obtained a decree nisi of divorce which was made absolute in March 1966. In February 1966 the wife issued a summons under section 17 of the Married Women's Property Act, 1882, asking for an order that the house be sold and the proceeds of sale distributed between her and her husband. In her affidavit in support of the summons sworn to in February 1966 she asked that the property be sold and that the proceeds be distributed equally. An order was made declaring that the wife was entitled to a half interest in the property, that the property be sold and that half the proceeds of sale be paid to her. The husband remained in occupation of the house until January 2, 1967, when a writ of possession was executed. The husband died four days later intestate and the property remained unsold. The question for determination was whether the joint tenancy was severed in the lifetime of the husband. The wife claimed to be entitled to the whole property.

Plowman J. in the course of his judgment said (p. 857):

"The summons, coupled with the affidavit in support of it, clearly evinced an intention on the part of the plaintiff that she wished the property to be sold and the proceeds distributed, a half to her and a half to the deceased. It seems to me that that is wholly ... inconsistent with the notion that a beneficial joint tenancy in that property is to continue, and therefore, apart from these objections to which I will refer in a moment, I feel little doubt that in one way or the other this joint tenancy was severed in equity before the end of February 1966, as a result of the summons which was served on the plaintiff's then husband and as a result of what the plaintiff stated in her affidavit in support of the summons of February 11, 1966."

Further on in his judgment he said (p. 858):

"Counsel for the plaintiff took another point. Counsel for the defendants, in argument, having indicated that he relied not only on the summons as operating to sever the joint tenancy but on the orders as well, counsel for the plaintiff submitted on the authority of *Bedson* v. *Bedson* hat there was no power in the Court by an order made under the Married Women's Property Act, 1882, to sever a beneficial joint tenancy. He submitted that the power of the Court was to declare what the rights of the parties were and not to alter those rights. That may well be so – for the purposes of my judgment I am prepared to assume that counsel for the plaintiff is right about that – but the view which I take is that the question does not arise here. The severance, in my judgment, is effected by the summons and the affidavit, not by any order that was made. Accordingly, in my judgment, the beneficial joint tenancy was severed by the plaintiff in the life time of the deceased husband ..."

The Married Women's Property Act, 1882, does not apply here. Our Courts have jurisdiction under the Supreme Court of Judicature Act to order the sale or partition in any action for partition of land. Section 100 of the Women's Charter empowers the Court to order a division of the matrimonial property or the sale of the matrimonial property and the division between the parties of the proceeds of sale.

Plowman J. was following the dictum of Havers J. in *Hawkesley* v. *May*. However the opposite view was held by Walton J. in *Nielson-Jones* v. *Fedden*.[5]

In *Burgess* v. *Rawnsley*[6] Lord Denning M.R. expressed the view that a declaration of intention to sever is enough to effect a severance but Sir John Pennycuick expressed the view that a declaration of intention is not enough. Browne L.J., the third member of the Court, did not express any view on the point.

I am of the view that a unilateral declaration of intention to sever, if communicated to the other joint tenants, is sufficient to effect a severance. I am also of the view that an Order of Court directing the sale and division of the proceeds of sale in accordance with the parties' respective interests in the joint tenancy operates as a severance of the joint tenancy the moment it is made.

What are the facts in this case? As early as June 5, 1978, the then solicitors of K.T. Arasu wrote to the defendant stating that as unhappy differences had arisen between the parties K.T. Arasu saw little purpose in him living in the matrimonial property alone and proposed that the property be sold and the proceeds of sale be divided and inquired if the proposal was acceptable to the defendant in which event steps would be taken to have the property sold. The defendant's solicitors replied on June 8, 1978, stating that the defendant had no objection if K.T. Arasu was prepared to sell the property at a good market price and stating "of course our client will endeavour at the same time to look for a buyer." Nothing further took place.

In July 1982 the defendant obtained a decree nisi of divorce. In August 1982 the defendant in her affidavit prayed to this Court for "a just distribution" of the said property. A similar prayer was made in her affidavit of May 16, 1983. However in her affidavit of October 1, 1983, the defendant urged the Court to divide the proceeds of sale of the said property equally between her and her husband and said:

"As this is only fair and just in view of my contribution and my sole effort in bringing up the family without maintenance from the respondent and also in view of the debts I have incurred in bringing up my family."

On October 5, 1983, it was ordered that the said property be sold and the proceeds of sale be equally divided between the husband and the wife.

On the authorities that I have cited and on the facts of this case I find that the beneficial tenancy was severed while K.T. Arasu was alive.

I now come to deal with the defendant's application that the Order of October 5, 1983, be varied and that an order be made that the said property be sold and that 75% of the proceeds of sale be paid to her. I have already set out the grounds on which she makes this application.

It is submitted on behalf of the plaintiffs that the Court is not empowered to vary the Order of October 5, 1983, which was made under section

100 of the Women's Charter. It is submitted that the section in the Women's Charter which empowers the Court to vary a subsisting order is section 106 and that only empowers the Court to vary or rescind any subsisting order for maintenance.

Counsel for the defendant says that this Court has the power to vary by virtue of section 31 of the English Matrimonial Causes Act, 1973. In any case the Order of October 5, 1983, has not taken effect as the decree *nisi* has not been made absolute and the Court has power under its inherent jurisdiction as there has been non-disclosure or full and frank disclosure by K.T. Arasu of his assets.

There is no substance in counsel's submission.

I am of the view that the Court has no power to vary the Order of October 5, 1983. In any case even if it has the power I would not vary it. K.T. Arasu in the divorce proceedings claimed that the said property was bought by him alone and that the defendant never contributed in any way towards the purchase or maintenance of this property. Many affidavits and counter-affidavits were filed by the parties.

In her affidavit sworn to on October 1, 1983, paragraph 7, the defendant said:

"As regards maintenance, I wish to state that I only require a nominal maintenance of $1.00 from the respondent but I urge this Honourable Court to divide the proceeds of sale of the matrimonial assets equally between the respondent and me as this is only fair and just in view of my contributions and my sole effort in bringing up the family without maintenance from the respondent and also in view of the debts I have incurred in bringing up my family."

It was the defendant who had sought the sale of the said property under section 100 of the Women's Charter so as to claim a half share in the proceeds of sale. K.T. Arasu had maintained that the said property should not be sold as he would then have no house to stay; that he was not eligible for an H.D.B. flat and that it would be beyond his means to buy a private house. I had in the divorce proceedings weighed the facts relevant to the issue before me before making the Order of October 5, 1983, namely, the claim of the defendant that she had made a bigger contribution towards the purchase of the said property and that she had incurred debts for supporting the family. Now the defendant wants me to take into consideration the savings of the husband of $123,000 which the husband had not disclosed. Even if the husband had disclosed the sum of $123,000 it would not have affected my decision and I would still have decided that the property be sold and the proceeds be equally divided. At the time of the divorce proceedings the husband, who was 60 years old, was unemployed and not in receipt of any income and was living on his savings.

Therefore I declare that the joint tenancy of the said property had been severed in the lifetime of K.T. Arasu. There will be order in terms of prayers (2), (3), (4) and (5) of the Originating Summons.

Order accordingly.

Solicitors: *David Gerald & Partners; Jacob Chacko & Associates; V. Ramakrishnan & Co.*

MALAYAN CREDITS PROPERTIES (PTE.) LTD. v. BETZ PTE. LTD.

[O.C.J. (Thean J.) January 16, 1986]

[Singapore – Originating Summons No. 318 of 1984]

Landlord & Tenant – Whether notice to determine tenancy valid – "Tenant" – Meaning of.

The plaintiffs are landlords of three blocks of apartments situate at Ardmore Park, and the defendants, during the period October 15, 1979 to February 29, 1984, were the tenants of the plaintiffs of one of the apartments. Three successive tenancies were entered into by the plaintiffs and the defendants during this period; they contained the same terms and conditions except for the rental rate.

The defendants in a letter dated December 28, 1983 informed the plaintiffs that their managing director, who had been occupying the apartment, would be returning to the United Kingdom permanently in March 1984 and gave two months' notice determining the tenancy. The notice presumably was given under clause 14 of the tenancy agreement though it did not expressly say so. The plaintiffs in a letter dated January 3, 1984 rejected this notice, stating that the defendants could not avail themselves of clause 14 to determine the tenancy as the word "Tenant" means the defendants and not an employee or officer of the defendants.

In an originating summons dated April 9, 1984, the plaintiffs sought determination of the following question: whether upon the true construction of the tenancy agreedated December 31, 1983 ("The Tenancy Agreement") made between the plaintiffs and the defendants, the tenancy was determinable by notice given by the defendants. The sole issue before the Court, therefore, lay in the construction of clause 14 of the Tenancy Agreement.